

**REMARKS**

Claims 1, 2, 4-13 and 15-36 are pending. Claims 1, 2, 4-13, 15-33 and 36 are withdrawn from consideration. After entry of the present amendments, claims 1, 2, 4-13, 15-33 and 36 are canceled. Claims 34 and 35 are amended. Claims 37-40 are newly added.

**Election/Restriction**

Applicants have canceled claims 1, 2, 4-13, 15-33 and 36. Claims 3 and 14 had been canceled earlier.

**New Claims 36-40**

Applicants respectfully submit that claims 37-40 have been added to the present application to further define that the metallized film is metallic foil, and that the thermoplastic polymeric material of the first layer comprises ethylene acrylic acid copolymer. The substance of these claims are clearly supported by the specification, and Applicants respectfully submit that these claims are novel and non-obvious over any of the references cited, taken alone or in combination.

**Rejections Withdrawn**

Applicants note with appreciation the withdrawal of all the 35 U.S.C. §102(b) rejections to the pending claims.

**35 U.S.C. § 112**

Claims 34-35 are rejected by the Examiner under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With respect to the rejection under 35 U.S.C. 112, second paragraph, Applicants have amended claims 34 and 35 in accordance with the Examiner's remarks.

**35 U.S.C. § 102**

Claims 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaschel et al. (US 5,885,707).

With respect to the above rejection under 35 U.S.C. 102(b), this rejection is respectfully traversed for the reasons that follow.

Kaschel et al. merely describe a sealable laminated film wherein the sealable layer is a metallocene catalyzed ethylene  $\alpha$ -olefin copolymer having a melt index of 0.5 to 10 g/10 min. at 190° C and 2.16 kg. Independent claims 34 and 35, however, each defines “a third layer comprising a single site catalyzed polyethylene wherein said single site catalyzed polyethylene has a melt index above about 10 g/10 min.”

The Examiner argues that Kaschel et al. disclose:

a third layer comprising a single site catalyzed polyethylene wherein said single site catalyzed polyethylene (column 4, lines 4-16) has a melt index above about 10 (column 2, lines 28-34) for use as a heat sealant layer.

(Office Action dated November 14, 2005, pp. 4-5).

The Examiner's reliance on the disclosure at column 2, lines 28-34 for support that the single site catalyzed polyethylene of Kaschel et al. has a melt index above about 10 is, respectfully, misplaced. Column 2, lines 28-34 reads as follow:

EP 0572034 describes an ethylenic copolymer and an ethylenic copolymer composition. The melt index MFR is between 0.1 and 30 g/10 min, the density is between 0.88 and 0.94 g/cm<sup>3</sup>. The catalyst used for the production of the polymers contains metallocenes. The sealing temperatures of flat film specimens are mentioned. Sealing seam strengths and hot tack measurements are not mentioned.

This excerpt is included by Kaschel et al. to distinguish Kaschel et al.'s invention from a prior art reference, and in no way incorporates the description of the metallocene ethylenic copolymer of the prior art reference into his invention. In fact, Kaschel et al. explicitly do not incorporate the disclosure of the EP 0572034 by limiting their invention to a

metallocene catalyzed ethylene copolymer having a melt index from 0.5 to 10 g/10 min.

Specifically, Kaschel et al. describe their invention in the Summary of the Invention as follows:

The said object was achieved according to the invention by means of a sealable laminated film containing a copolymer consisting of ethylene and  $\alpha$ -olefin, characterized in that the MPE copolymer is characterized as follows:

\* \* \*

melt index MPR [sic] from 0.5 to 10 g/10 min.

(Kaschel et al., column 4, lines 40-47).

Moreover, Kaschel et al. fail to recognize the importance of the difference in melt index between the second layer and the third layer, as defined in the present claims. Specifically, the present claims define that the third layer has a melt index above about 10 g/10 min., and that the low density polyethylene of the second layer has a melt index lower than the melt index of the single site catalyzed polyethylene of the third layer. The specification of the present invention describes the importance of this limitation:

Although the third heat sealant layer comprises a thermoplastic polymeric material having a very high melt index, this material may be coextruded via blown film coextrusion without difficulty because it is disposed adjacent to the low melt index thermoplastic polymeric material of the second layer. The high melt index thermoplastic polymeric material may, therefore, maintain its stability during the blow film coextrusion process. Without the low melt index thermoplastic polymeric material of the second layer 12, the high melt index material of the third heat sealant layer would not adequately coextrude via blown film coextrusion.

(Specification, p. 10, lines 1-7).

In Kaschel et al.'s film structure, it is the relationship of the melting points of the polymers that comprise the various layers of the film structures that is important, not the melt index of the polymers. Kaschel et al. require that the polymers that comprise the sealing layer

of the film structure have the lowest melting point in relation to the other layers. This requirement is not found in Applicants invention.

Specifically, Kaschel et al. demonstrate a selection of possible polymers for a two or three layer film structure subject to satisfying the following inequality:

$$F_{pi-1} < F_{pi-2} < \dots < F_{pi} < \dots < F_{pi-n} \text{ (layers } i-1 \dots n) \quad \text{(Equation 1)}$$

wherein  $F_{pi}$  is the crystallite melting point of the polymer from layer  $i$  and wherein  $i-1$  has the lowest crystallite melting point. It is the relationship of the crystallite melting points of the polymers that comprise the various layers of the film structure. Kaschel et al. fail to teach or even remotely suggest the relationship of the melt indices of the polymers of the second layer and the third layer (acting as the heat sealant layer), as claimed by the Applicants in the present claims.

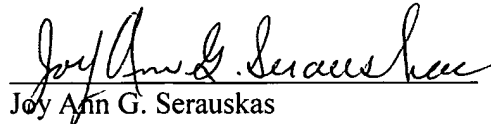
In view of the above remarks, Applicants respectfully submit that the rejection under 35 U.S.C. §102(b) has been overcome and should be withdrawn.

**CONCLUSION**

In view of the foregoing remarks and amendments, Applicants respectfully submit that all of the claims in the application are in allowable form and that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicants urge the Examiner to telephone Applicants' agent so that the same may be resolved and the application expedited to issue. Applicants request the Examiner to indicate all claims as allowable and to pass the application to issue.

Respectfully submitted,

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